

HONORABLE ROBERT S. LASNIK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRUCE KEITHLY, DONOVAN LEE,
and EDITH ANNA CRAMER,
Individually and on Behalf of all Other
Similarly Situated,

Plaintiffs,

vs.

INTELIUS, INC., A Delaware
Corporation; and INTELIUS SALES,
LLC, A Nevada Limited Liability
Company,

Defendants.

Case No. C09-1485-RSL

SUPPLEMENTAL DECLARATION OF
RONALD V. THUNEN III IN SUPPORT
OF DEFENDANTS' MOTION TO
DISMISS PLAINTIFFS' COMPLAINT

NOTED FOR:

Monday, March 8, 2010

I, RONALD V. THUNEN III, declare:

1. I have been employed with Intelius Inc. ("Intelius"), defendant in the above-captioned matter, since August 2006. Until February 2009, I was variously employed as a program manager, senior program manager, and lead program manager. Between February 2009 and February 2010, I served as Director of Program Management of Intelius' Consumer Business Unit. Since February 2010, my duties have expanded to include product ownership of Intelius' consumer transactional websites, as a "Product Owner" within the Consumer Business Unit.

SUPPLEMENTAL DECLARATION OF
RONALD V. THUNEN III IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' COMPLAINT - 1
Cause No.: C09-1485-RSL

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1 2. I am making this declaration based on facts within my own personal knowledge
2 and in support of Defendants' Motion to Dismiss Plaintiffs' Complaint and Defendants' Request
3 for Judicial Notice. If called upon to do so, I would and could competently testify thereto.

4 3. I am providing this Declaration as a supplement to my January 11, 2010
5 Declaration in Support of Defendants' Motion to Dismiss Plaintiffs' Complaint (my "January 11
6 Declaration").

7 4. For ease of reference, I am re-attaching Exhibits A – C to my January 11
8 Declaration.

9 **Exhibit A (June 2008 Adaptive Offer)**

10 5. As stated in my January 11 Declaration, Exhibit A is a true and correct copy of the
11 Adaptive Marketing LLC "Family Safety" enrollment form webpage on the Intelius site displayed
12 to plaintiff Lee/ Cramer in June 2008.

13 6. In the normal course of its business, Intelius maintains records relating to the time
14 period during which Adaptive offers, including the Adaptive enrollment form attached as Exhibit
15 A, were active on Intelius' websites. The Adaptive offer attached as Exhibit A was active in June
16 2008. Intelius' records of Lee/Cramer's June 2008 transaction, maintained in the normal course
17 of Intelius' business, show that Lee/Cramer were presented with the enrollment form attached as
18 Exhibit A.

19 **Exhibits B and C (April 7, 2009 Intelius In-Cart IDP Offer)**

20 7. As stated in my January 11 Declaration, Exhibit B consists of true and correct
21 copies of Intelius Background Check check-out webpages as they were displayed to plaintiff
22 Keithly on April 7, 2009 in connection with his purchase of a background check for \$39.95 with a
23 \$10.00 discount for enrolling in a trial membership of Identity Protect.

24 8. As stated in my January 11 Declaration, Exhibit C consists of true and correct
25 copies of Intelius Background Check check-out webpages as they existed on April 7, 2009 and

1 would have been displayed to Mr. Keithly, had he elected to purchase the identical background
2 check product for \$49.95.

3 9. Exhibits B and C were regenerated from Intelius' back-up tapes and servers on
4 January 11, 2010, at my direction and under my supervision.

5 10. In the normal course of its business, Intelius periodically creates snapshots of its
6 websites as they exist at specific points in time. Those snapshots are taken and preserved on
7 back-up tapes via an automated process. These point-in-time snapshots consist of the software
8 code on which the webpages and webpage flows for a specific date, are based.

9 11. On April 5, 2009, at 5:17 a.m., Intelius archived a true and correct point-in-time
10 snapshot of Intelius' website code.

11 12. The April 5, 2009 code was updated and rolled forward to April 7, 2009 (the date
12 of plaintiff Keithly's transaction), by applying any changes that were made to the component files
13 during the intervening 48 hours. The version history of each component file is archived
14 separately on Intelius' servers. Changes to the files comprising the April 5 website code were
15 made once on April 6 and once on April 7. These changes were applied to the April 5 code to
16 reproduce the website code as it existed on April 7.

17 13. Exhibits B and C are true and correct copies of the webpages that resulted from
18 running plaintiff Keithly's background search request on the regenerated archived code from
19 April 7, 2009.

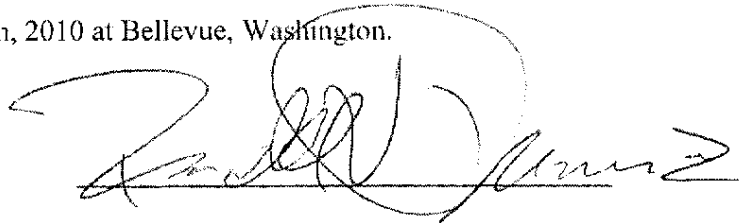
20 14. Step 1 of Exhibit B is the first webpage that plaintiff Keithly viewed on an Intelius
21 website, after having been re-directed from a third-party (not Adaptive) website where he input
22 his search criteria. Step 7 is the last step in the purchase process. Clicking on the red button
23 "Confirm the Purchase and Show My Report" confirms the customer's purchase and signals
24 Intelius to send the confirmation email identified as "Step 8."

25 15. The actual background report resulting from plaintiff Keithly's search request is

1 not available. Although Intelius' webpages can be rolled back to certain points in time using
2 archived data, the results of any specific search requested via those webpages (e.g., in connection
3 with purchase of a background report) are derived by searching Intelius' current public records
4 database. Accordingly, although it is possible to closely replicate the background report that
5 plaintiff Keithly requested, such a report derived from the current database could differ from one
6 generated from the database as it existed on April 7, 2009.

7 I declare under penalty of perjury under the laws of the State of Washington that the
8 foregoing is true and correct.

9 DATED this 8th day of March, 2010 at Bellevue, Washington.

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13 RONALD V. THUNEN III
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of March, 2010, I served a true and correct copy of the foregoing SUPPLEMENTAL DECLARATION OF RONALD V. THUNEN III IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT on the following individuals:

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